

Message Text

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ACTION EB-11

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SUBJ PROPOSED GOC REGULATIONS REGARDING APPELATIONS OF ORIGIN

REFS A) OTTAWA 2906 AND PREVIOUS

B) STATE 200466

1. JEFFERSON PEYSER, GENERAL COUNSEL, WINE INSTITUTE, ACCOMPANIED BY EMBASSY'S COMMERCIAL COUNSELOR, CALLED AT DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS (CCA) TODAY TO PRESENT 9-PAGE BRIEF WITH SUPPORTING MATERIAL, ASKING THAT PROPOSED REGULATIONS NOT BE ADOPTED. WE WERE RECEIVED BY ACTING DEPUTY MINISTER BLAIR SEABORN (REPLACING BOLGER, WHO WAS DETAINED OUTSIDE OTTAWA); DIRECTOR OF CONSUMER FRAUD PROTECTION BRANCH, H.W. WAGNER; J.B. ELLINGHAM OF STANDARDS BRANCH; AND MRS. MARGARET WYLIE, CONSUMER RESEARCH BRANCH.

2. IN EMBOFF'S OPINION, PEYSER MADE OPTIMUM USE OF THE 20 MINUTES WHICH SEABORN ABLE TO DEVOTE. PRINCIPAL POINTS
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MADE ORALLY BY PEYSER WERE: (A) GENERIC CHARACTER OF

TERMS SUCH AS BURGUNDY, SAUTERNE AND CHAMPAGNE; (B) THE FACT THAT FRENCH-CANADIAN TRADE AGREEMENT OF 1933 NEVER SIGNED; AND (C) CONSUMER ACCEPTANCE OF GENERIC AND SEMI-GENERIC TERMS AND, FROM STANDPOINT OF CONSUMER DECEPTION POTENTIAL, THE FACT THAT NOBODY IS DECEIVED, E.G., BY THE LABEL "CALIFORNIA BURGUNDY".

3. SEABORN STRESSED THE PROPOSED REPEAT PROPOSED CHARACTER OF SUBJECT REGULATIONS AND CCA'S INTENT TO STUDY ALL BRIEFS AND COMMENTS SUBMITTED AND THEN CONSIDER WHETHER CHANGES SHOULD BE MADE IN PROPOSED REGULATIONS BEFORE RECOMMENDING THEM TO CABINET FOR ADOPTION. HE SAID HIS OFFICIALS WERE EXPECTING AND LOOKING FOR COMMENT AND, IN RESPONSE TO EMBOFF'S QUESTION, ALSO SAID GOC AUTHORITIES WOULD ENTERTAIN REQUEST FOR REASONABLE EXTENSION OF SEPTEMBER 27 DEADLINE. SEABORN SAID PROPOSED REGULATIONS WERE ONLY SECOND INSTANCE OF HIS DEPARTMENT TAKING THIS ROUTE, I.E., PUBLISHING PROPOSED REGULATIONS FOR COMMENT OF ALL CONCERNED WITH VIEW TO ENTERTAINING SUGGESTIONS FOR CHANGES BEFORE PROMULGATING THE ACTUAL REGULATIONS. (THE FIRST INSTANCE, HE SAID, WAS THE RECENT GENERAL REGULATIONS ON PACKAGING AND LABELING, OTTAWA A-501, SEPTEMBER 27, 1973.)

4. SEABORN ALSO SAID IT HAD NEVER BEEN GOC'S INTENTION, UNTIL THE RECENT CANADIAN SUPREME COURT RULING ON CHAMPAGNE IN THE CHATEAU-GAI (MONTREAL A-61, APR. 10, 1974) CASE TO PLACE BURGUNDY, SAUTERNE AND OTHER SEMI-GENERIC NAMES IN A DIFFERENT CATEGORY FROM PORT AND SHERRY (SCHEDULE IV OF PROPOSED REGULATIONS). HOWEVER, FOLLOWING THAT COURT DECISION, SAID SEABORN, CCA'S LEGAL COUNSEL FELT THEY HAD NO OPTION BUT TO LIST BURGUNDY, SAUTERNE, ETC. UNDER SCHEDULE III.

5. WITH RESPECT TO PEYSER'S POINT THAT THE FRENCH-CANADIAN AGREEMENT OF 1933 HAD NEVER BEEN SIGNED, SEABORN SAID, "THAT IS ONE OF THE FUNNY ONES, WE DON'T QUITE UNDERSTAND IT OURSELVES." HE SAID AGAIN THAT THE DECISION TO LIST BURGUNDY, ETC. UNDER SCHEDULE III FLOWED DIRECTLY FROM THE SUPREME COURT DECISION IN LIMITED OFFICIAL USE

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THE CHATEAU-GAI CASE, AND DID NOT REPEAT NOT RESULT FROM ANY FRENCH REPRESENTATIONS.

6. PEYSER THOUGHT THIS ISSUE, I.E., WHETHER ANY PRODUCT OTHER THAN CHAMPAGNE WAS INVOLVED IN COURT'S DECISION, MIGHT BE USEFULLY DISCUSSED WITH GOC LAWYERS AND SEABORN AGREED. PEYSER POINTED OUT THAT ARGENTINES ARE USING THE TERM "CHAMPAGNE" UNDER LICENSE FROM FRENCH. PEYSER

ALSO OBSERVED THAT THE ISSUE OF SECONDARY MEANING OF TERMS MIGHT BETTER BE DETERMINED VIA PUBLIC HEARINGS THAN INSTANT PROCESS OF SUBMITTING BRIEFS AND COMMENTS.

7. SEABORN QUESTIONED WHY THE CALIFORNIA WINERIES HAD NOT DEVELOPED THEIR OWN WINE NAMES. PEYSER REPLIED THAT THIS HAS BEEN DONE TO SOME EXTENT, E.G., "EMERALD DRY RIESLING" AND "RUBION", BUT EXPERIENCE HAD SHOWN THAT THESE NAMES DID NOT EVOKE THE DESIRED CONSUMER RECOGNITION.

8. COMMENT: PEYSER AND COMMERCIAL COUNSELOR CAME AWAY FROM MEETING MILDLY ENCOURAGED OVER APPARENT GOC OFFICIALS' RECEPTIVITY TO ALL REASONABLE REPRESENTATIONS AND THEIR APPARENT INTENT TO GIVE SERIOUS, DELIBERATE CONSIDERATION TO SUCH REPRESENTATIONS IN DRAWING UP FINAL REGULATIONS.

9. REF. B RECEIVED AFTER FOREGOING DRAFTED. EMBASSY WILL REQUEST EXTENSION IMMEDIATELY.
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